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VIA E-MAIL AND HAND DELIVERY

Vojin Janjić
Tennessee Department of Environment and Conservation
Division of Water Resources
William R Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 11th Floor
Nashville, Tennessee 37243
Vojin.Janjić@tn.gov

Re: The City of Johnson City, Tennessee's Comments to Proposed Rule Amendment

Dear Mr. Janjić:

The City of Johnson City, Tennessee submits the following comments to the proposed amendment to Rule 0400-40-05:

1. 0400-40-05-.02 (former (12)) – For consistency, the term “Board” should remain a defined term in the definitions section, 0400-40-05-.02, and should not be defined in 0400-40-05-.12(1).
2. 0400-40-05-.02(31), (76), and (100) – The definitions of “dry weather release,” “release,” and “wet weather release” should be deleted or the proposed amendment should be revised to clarify that such incidents are not violations of the Tennessee Water Quality Control Act, Tenn. Code Ann. § 69-3-101 *et seq.* (“TWQCA”) or an NPDES permit issued thereunder. A “release” under the proposed definition does not reach “waters,” does not affect water quality, and is not within the permitting authority granted to the Commissioner pursuant to Tenn. Code Ann. § 69-3-108(g).

Any authority that TDEC has to regulate and/or permit what the proposed rule defines as a “release” and related operation and maintenance issues is granted through other statutory provisions, including Tenn. Code Ann. § 68-221-103. An attempt to regulate a “release” as a violation of or noncompliance with an NPDES permit is inconsistent with and impermissibly circumvents and/or changes the statutory rights (including appeal rights) and obligations of operators of public sewerage systems.

3. 0400-40-05-.02(57) – The portion of the new definition of a “new or increased discharge” stating “(2) if no such limitations exist, the actual discharges of that pollutant” is vague and should be deleted.

4. 0400-40-05-.02(99) and (100) – The definition of “wet weather overflow” and “wet weather release” should be revised to state that a “wet weather overflow” and “wet weather release” at a single location caused by a specific “rainfall event” shall be considered a single “wet weather overflow” or “wet weather release,” as applicable. Also, in 0400-40-05-.02(99) the word “of” should be changed to “a.”
5. 0400-40-05-.05(3) – This provision impermissibly expands the alternatives analysis required under Tenn. Code Ann. § 69-3-108(e). All provisions in this subsection after the term “beneficial reuse of the wastewater” should be deleted. In addition, Tenn. Code Ann. § 69-3-108(e) only refers to a “new or expanded wastewater discharge into surface waters.” To the extent the term “new or increased discharge of pollutants to surface waters” is broader than the statutory language, the language should be revised to be consistent with the TWQCA.
6. 0400-40-05-.06(3)(b) – The changed language should be revised to state “relevant facts, data or other information.”
7. 0400-40-05-.06(3)(g) – This provision should be deleted. Information about pollutants “within the Department’s reasonable contemplation” is not, and should not be limited in the regulations to, only those disclosed by the applicant and listed in the permit rationale. A potential result of this provision will be that applicants generate, and the Department will be required to review and list in the permit rationale, voluminous and unnecessary information and data, leading to unnecessary increased costs and permit review time.
8. 0400-40-05-.07(2)(m)1. – A “release” under the proposed definition does not reach “waters,” does not affect water quality, and is not within the permitting authority granted to the Commissioner for NPDES permits pursuant to Tenn. Code Ann. § 69-3-108(g).

Any authority that TDEC has to regulate what the proposed rule defines as a “release” and related operation and maintenance issues is granted through other statutory provisions, including Tenn. Code Ann. § 68-221-103. An attempt to regulate a “release” as a violation of or noncompliance with an NPDES permit is inconsistent with and impermissibly circumvents and/or changes the statutory rights (including appeal rights) and obligations of operators of public sewerage systems. The second sentence of proposed amended Rule 0400-40-05-.07(2)(m)1. should be deleted or the proposed amendment should be revised to clarify that a “release” is not a violation of the TWQCA or an NPDES permit issued thereunder.

In addition, any determination regarding whether the operation and maintenance by a permittee is proper should be made by publically available objective criteria and procedures, subject to public comment and Board approval.

9. 0400-40-05-.07(2)(n)1. – A “)” should be added after the word “maintenance.”
10. 0400-40-05-.07(2)(n)1.(iv), 0400-40-05-.07(2)(o)1., and 0400-40-05-.07(2)(o)2. – “Sanitary sewer overflows” and “releases,” and any prohibitions thereof, are **not** “Effluent

Limitations.” See Rules 0400-40-05-.08 0400-40-05-.02(32). The reporting required by the proposed amendment should not allow a numeric effluent limit for such incidents, and NPDES permits should not assign any "Qualifier Value Unit" including "< 0" for such incidents.

In addition, because reporting of “sanitary sewer overflows” and “releases” are not effluent limitations, reports of these should not be part of monthly discharge monitoring reports. At a minimum, a “release” as defined in the proposed amendment should not be included on the NPDES discharge monitoring reports because a “release” is not a discharge, is not violation of the TWQCA, and cannot be a violation of an NPDES permit issued thereunder.

Further, the proposed amendment should include a reasonable volumetric threshold for reporting “sanitary sewer overflows” and “releases” that do not cause a threat to human health or the environment. Other states in U.S. EPA Region 4 have volumetric reporting thresholds, such as the 500 gallon threshold in South Carolina for all sanitary sewer overflows and 1,000 gallons in North Carolina for what the proposed amendment defines as a “release.”

11. 0400-40-05-.12(2) – Tenn. Code Ann. § 69-3-108(g) requires NPDES permits to be consistent with regulations promulgated under the TWQCA. The first sentence of 0400-40-05-.12(2) should be revised to be consistent with Tenn. Code Ann. §§ 69-3-108(g) and 69-3-105(i). The language requiring a petitioner for appeal to state a claim based on a “violation” of the TWQCA or the rules promulgated thereunder is too restrictive.

Sincerely,


John W. Dawson IV *by TAI*

cc: Stephanie A. Durman (via email to stephanie.durman@tn.gov)